

III.B.10.

"Guidance on Notice to Public and Commenters in Clean Water Act Class II Administrative Penalty Proceedings", distributed August 28, 1987.

**GUIDANCE ON NOTICE TO PUBLIC AND COMMENTERS  
IN CLEAN WATER ACT CLASS II ADMINISTRATIVE PENALTY PROCEEDINGS**

**I. Statutory Requirements of Notice to Public and Commenters**

The Clean Water Act requires that, before issuing an order assessing a Class I or II penalty, the Administrator shall provide public notice of the proposed issuance of the order. Section 309(g)(4)(A). Persons who comment on a proposed assessment must be given notice of any hearing held, and notice of the issuance of the order that actually assesses the penalty. Section 309(g)(4)(B). EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures ("Class I Guidance") sets forth procedures by which EPA provides public notice in Class I proceedings. As set forth below, EPA should provide public notice in Class II proceedings in a manner similar to the procedures set forth in the Class I Guidance.

**II. Public Notice of the Proposed Issuance of an Order**

EPA should provide public notice of the proposed issuance of an order assessing a Class II penalty in the form and manner set forth in §126.102(b) of the Class I Guidance, except that the notice should refer to the comment period set forth in 40 CFR 22.28(d), and should not refer to the comment period set forth in §126.102(b)(1) of the Class I Guidance.

**III. Providing Commenters with Notice of Hearing**

As set forth in §126.104(e) of the Class I Guidance, the Presiding Officer should serve notices of hearing on each person who commented on the proposed Class II assessment.

**IV. Providing Commenters with Notice of Order Assessing Penalty**

As set forth in §126.102(e) and §126.111 of the Class I Guidance, the Hearing Clerk should serve a copy of the final order on each person who commented on the proposed Class II assessment.

For further information regarding the guidance, contact Gary Hess, OECM, at FTS 475-8183.